

# *TOWNSHIP OF MARLBORO*

## ZONING BOARD OF ADJUSTMENT

1979 TOWNSHIP DRIVE

MARLBORO, NJ 07746-2299

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### **Chairperson**

Glenn Malysz

### **Vice-Chairperson**

Michael Fishman

### **Secretary**

Robert Knight

### **Members**

Matthew Weilheimer

Adrianne Spota

Lewis Wildman

Michael Mahon

Joseph Sparacio - Alt.#1

Steven Pitchon - Alt.#2

### **Zoning Board Clerk**

Yvonne Cautillo

### **Attorney**

Michael Steib, Esq.

### **Engineer**

Gravatt Consulting Group

David Thesing, P.E., P.P.

### **Planner**

Thomas J. Scangarello, P.P.

Planning Design Collaborative, LLC

### **Administrative Officer**

### **Zoning Officer**

Sarah Paris

## ZONING BOARD OF ADJUSTMENT

July 1, 2008

REGULAR MEETING

SALUTE TO FLAG

SUNSHINE LAW READ

## ROLL CALL

**PRESENT:** Glenn Malysz, Robert Knight, Michael Mahon,  
Adrianne Spota, Jennifer Bajar, Michael Fishman,  
Matthew Weilheimer, Lewis Wildman,

**ALSO PRESENT:** Michael Steib, Esq. Board Attorney  
Sarah Paris, Administrative Officer  
Thomas Scangarello, Planner  
David Thesing, Engineer

**ABSENT:** Steven Pitchon

The Board accepted the minutes of June 17, 2008.

## MINUTES APPROVED:

Offered:	Glenn Malysz	Second:	Robert Knight
Ayes:	8	Nays:	0
Absent:	0	Abstain:	0

Public Session.

Paul Schaflin, 21 Stonehenge Way, Morganville sworn in.

If an application is made to board, with notice and if there is no individual ownership, does this notice go to builder? Is the builder obligated to notify potential buyers? If during the application process, people move in, without knowledge of this application and if they find out later, is there a mechanism for the Board to allow this application to reopen? Can Board investigate allegations of perjury?

Michael Steib, Esq. stated that every resolution relies on the facts. The second question is hypothetical. The appropriate time is when the application comes in.

**ZB 08-6328 – Rosen, Lane & Caroline**

Public Hearing for approval to construct an inground pool and associated fencing and relocate 8' x 12' shed within one hundred feet of top of bank of stream. The applicant is owner of the property known as 11 Fairview Road, Block 225, Lot 67. Said property is located in an R-30/20 residential zone.

The Board took jurisdiction. The following evidence was entered into the record:

- A-1 Petition on appeal
- A-2 Denial by Zoning Officer
- A-3 Indemnification and Hold Harmless Agreement
- A-4 Disclosure Statement
- A-5 W-9 Form
- A-6 Tax Collector's Certification
- A-7 Notice to Adjoining Property Owners
- A-8 Adjacent Property Listing
- A-9 Certified White Receipts and Green Cards
- A-10 Affidavit of Service
- A-11 Affidavit of Publication
- A-12 Owner's Affidavit of Authorization and Consent
- A-13 Conflict & Contribution Disclosure Statements
- A-14 Affirmation of Local Pay To Play Ordinance
- A-15 Survey of property, dated December 29, 2003, prepared by Thomas M. Ernst, 457 Spotswood-Englishtown Road, Jamesburg, NJ 08831; revised drawing received April 25, 2008
- A-16 Revised Pool Grading Plan dated April 2, 2008, prepared by Richard Spafford, P.E. 210 Cedar Lake Point, and Forked River, NJ 08731
- A-17 Gravatt Consulting Group Inc., report prepared by David A. Thesing, dated May 7, 2008.
- A-18 Affidavit of Completeness

Applicants, Lane Rosen and Caroline Hayes of 11 Fairview Road, were sworn in.

Adrianne Spota recused herself.

Mrs. Rosen stated what they are seeking to do:

1. Would like the principal status building coverage (14% coverage) remain as is. It has been this way since time of purchase.
2. Construct pool with small patio, with aluminum fence around pool for child safety.
3. Relocate shed to be in accordance with the code.
4. Rear fence to be moved back additional 10 feet (26 feet within utility easement). This would provide a more usable backyard property.

Additional Exhibits entered as evidence as to 10 foot marking for proposed rear fence:

- A – 19 – (2) 5x7 Photos
- A – 20 – (4) Photos

Mr. and Mrs. Rosen also state the shed has been dismantled.

The Board noted there is erosion, going into slope. Besides debris, it looks like rubber material in it.

Mr. Thesing stated there is nothing to identify as stream on map. Caroline Rosen said there are no utilities running through. It is a waterway that runs dry at times, a man made drainage ditch. They have not walked the full length; it is filled with poison ivy.

Exhibit A 21 (4 photos of brook area/hand written notes) entered.

Jennifer Bajar commented that it was possible to pivot the deep end of the pool.

Mr. Thesing, P.E. sworn in. He visited site and found the fence to be in keeping with neighboring fences in respect to location. Any encroachment could impact stream, erosion could occur. Sometimes the construction of a wall creates more of a problem. The slope is enough to regrade (almost 2 levels) and should be stabilized. If pool is rotated, they could relocate shed and put in same size pool, without relocating fence. Mr. Thesing also commented on the building coverage. 11% is required, with 14% is existing.

The Rosens stated they are prepared to build a retaining wall if necessary, as the elementary school has near edge of bank.

Exhibits entered:

A 22 - 3 photos showing school fence

A 23 - Aerial photo

A 24 - 4 photos of neighboring property (2 Aetna Court)

Public Comments: None

The Board went into Workshop.

Out of Workshop.

Motion to grant application with rotating the pool 15 – 20 degrees counter clockwise, not moving the existing fence and also to place a fence around the pool. Vegetation is to be planted on the slope to stabilize.

Offered by: Glenn Malysz

Seconded by: Robert Knight

Ayes: 7

Nays: 0

Absent: 1

Abstain: 1

Motion Approved.

Michael Mahon left at 9:00 Pm.

Adrianne Spota returned to dais.

#### **ZB 08-6315 – Marlboro Auto Wreckers**

Continuation of a Public Hearing for an interpretation of the Junkyard Ordinance relating to the recycling of scrap metal at 153 Tennent Road, Block 170, Lot 3, in the LC zone.

#### **ZB 08-6316 – Morganville Auto Wreckers**

Continuation of a Public Hearing for an interpretation of the Junkyard Ordinance relating to the recycling of scrap metal at 249 Spring Valley Road, Block 172, Lot 13 in the LC Zone.

### **ZB 08-6317 – Schechter Enterprises**

Continuation of a Public Hearing for an interpretation of the Junkyard Ordinance relating to the recycling of scrap metal at 158 Tennent Road, Block 147, Lot 34, in the C-2 Zone.

Michael Steib stated there was a crossover on exhibits marked into evidence. The revised list (A – 16) is read with additional exhibits entered as “AA”.

- A – 16 Tax Map Evidence Copies (A – H)
- AA-16 Aerial photo of Marlboro Auto Wreckers circa. 1955-1956
- A – 17 Interpretation Dated March 6, 2008 from Michael Steib, Esq.
- AA-17 Photoboard with two photos:
  - a. Marlboro Auto Wreckers circa. 2002
  - b. Marlboro Auto Wreckers circa. 2007
- A – 18 Three Aerial Photographs
- AA-18 Photoboard reverse view of Marlboro Auto Wreckers circa. 2007
- A – 19 Nine Photographs - 153 Tennent Road (Marlboro Auto Wreckers)
- AA-19 Photoboard aerial view of Marlboro Auto Wreckers circa. 2007
- A – 20 Nine Photographs – 158 Tennent Road (Schechter Enterprises)
- AA-20 Photoboard with photos:
  - a. Six photos of Marlboro Auto Wreckers and Schechter Enterprises SITE
  - b. One photo of Morganville site
- A – 21 Six Photographs – 249 Spring Valley Road (Morganville Auto Wreckers)
- A – 22 Letter from Giordano, Halleran & Ciesla, Dated May 5, 2008  
(Exhibits A – H):
  - a. Stenograph transcript of the proceedings dated 5/12/83 in the action of John Altobelli, et al. v. Marlboro Township
  - b. Continuation stenograph transcript, dated 5/12/83
  - c. Various documents including licenses, license applications received through OPRA request.
  - d. Transcript of the Board's March 4, 2008 Hearing
  - e. Certifications of various individuals having historical Knowledge of non-automotive scrap iron and metal at Schechter, including certifications of Leonard Monty Cholish, Kenny Miller, Clyde Cameron & Anthony Auriemma.
  - f. Receipt, Dated March 18, 2008, for mixed cast iron from Metal Management Northeast, Inc.
  - g. Receipt, Dated March 19, 2008, from Allied Waste Prod., Inc., for various non-automotive scrap metal.
  - h. Receipt, Dated March 27, 2008, from Leon Bickoff for Aluminum.
- A – 23 Township of Marlboro Junkyard License No. J0807 for Marlboro Auto Wreckers, 153 Tennent Road, Morganville, NJ
- A – 24 Township of Marlboro Junkyard License No. J0808 for Schechter Enterprises, 158 Tennent Road, Morganville, NJ
- A – 25 Township of Marlboro Junkyard License No. J0809 for Morganville Auto Wreckers, Spring Valley Road, Morganville, NJ
- A – 26 Letter to Elaine Schechter from Sarah Paris, Marlboro Township Zoning Officer, dated May 8, 2008, regarding the use of Morganville Auto Wreckers, 249 Spring Valley Road.
- A – 27 Letter to Sarah Paris, from Elaine Schechter, Dated May 12, 2008, Regarding the use of Morganville Auto Wreckers, 249 Spring Valley Road.
- A – 28 Copies of the Transcript of Proceedings for the May 6, 2008 Board Hearing.

A copy of the revised evidence list was given to Mr. Giunco.

The Board agreed to re-open the public portion as some residents were not noticed (the developer was) and they were given an opportunity to speak on the application.

Public Comment:

Stacey Pereria sworn in. Resides at 31 Ellis Court (closed on her house 5-23-08)

When we looked at home, no one at Regal said anything about the junkyard next to us. I grew up in Marlboro and knew there was a junkyard in front of property, with trees blocking the view. One week after I moved in the trees were being knocked down after 5:00 p.m. Police refused to help. I called the next day to find out whether they had permit. The trees were not of a caliber to need a permit. We did not know about a scrap metal plant. There is a school across the street. There is also a steep embankment. It is not fenced in and there is noise. Who is to clean up fuel, oil?

Darren Dingfelder sworn in. Resides at 34 Ellis Court (closed on house 4-10-08)

He is concerned about a change to the area if scrap is allowed. Different types of people, trucks, environmental issues, and noise level will increase.

Mr. Malysz stated the owner's issue is with the builder. The notice was sent to the new owner moving in.

Paul Benjamin sworn in. Resides at 30 Ellis Court. Mr. Benjamin acknowledged his name was noticed on list dated 12/21/07.

Mr. Gersharanjit Sant sworn in. Resides at 32 Ellis Court (closed on house 4/14/08) and is within 200 feet. The builder was evasive and not informing. Within the last few days the trees were cut down.

Mr. Sant has pictures to submit: Exhibit 01 through 04. They show when the lot was wooded, Pictures are across from retaining wall. Council advised to come before the Zoning Board.

Mr. Giunco objected as there is no way to identify where the photos are from. Stacy Pereria said she took the photos on 6-20-08. It is directly next to her house. There is an eight or nine foot retaining wall with chain link fence on the edge. It shows clearing in progress.

Cross examination. Mr. Giunco asked if he was advised that permits were issued? Mr. Valesi advised at the Council meeting that a permit was issued. Mr. Sant "Yes".

Mr. Giunco said when buyers purchase homes, information is available to them.

End of Public comment session.

Mr. Fishman stated we carried this interpretation to review transcript. What is the relevance of reviewing transcript?

Mr. Steib replied that the board needed time to review—some members needed time to digest. It is a resource—you can also base your decision on your own notes and recollection.

Mr. Scangarello asked if we know the nature of application for removal of trees.

Ms. Paris said that complaints came to office and she spoke with the engineer on site. There were only three trees that required permits.

Mr. Malysz asked if these sites and their fluids are regulated by DEP. Are the three sites registered?

Ms. Paris said that only one of Schechter's sites (Marlboro Auto Wreckers) is registered per Sheri Schiffrin, of the DEP, State of New Jersey. It is under DEP regulation per storm water runoff and vehicle fluids.

Mr. Malysz asked if there were any comments Mr. Giunco said no.

Workshop

Offered:

Glen Malysz

Seconded:

Lewis Wildman

Ms. Bajar said she has been a resident for many years and lives on that side of town and has not seen much activity at Schechter Enterprises, or Morganville Auto Wreckers. There has been no evidence of signage until about five years ago. Being an owner, you would want signs. The only activity is at 153 Tennent Road. There is no one to contact at the other sites. How can this be construed as an active junkyard? Ms. Bajar expressed concern about this application.

It was stated this business is automotive in nature and did not know if scrap metal was a significant part of the business. Mr. Knight believes the intent of Article 1 is for auto wreckers and Article 2 is for anything else. They are two separate and distinctive uses. The auto wreckers are a pre existing non conforming use.

Mr. Weilheimer said this is an interpretation only—not obvious. Does it allow this business? Not the issue. My interpretation is to believe this is not a scrap metal operation.

Ms. Spota acknowledged that the public offered some information as to what is occurring or not occurring. This business is automotive in nature, and there is historically no other way to interpret. Also, anything other than motor vehicles was very limited in discussion. Not ever actually applied for.

Mr. Malysz believes that scrap metal was not a significant part of business. If two businesses were to be maintained at the sites, with scrap metal included, now an additional license needs to be required. The applicant did not get a license for scrap metal. This is not a permitted use. Mr. Malysz noted that only 153 Tenant Road is in line with the DEP.

Out of workshop

Offered by: Glen Malysz                      Seconded by: Matthew Wealthier

The board does not find from the proofs presented that applicant has a valid scrap metal recycling pre-existing non conforming use on the sites. The interpretation believed is that it is not a permitted use on the three properties. A vote “yes” is to agree to deny scrap metal recycling as an on-going permitted use.

Motion Offered:	Glen Malysz	Seconded	Robert Knight
Ayes:	6	Nays:	1
Absent:	2	Abstain:	0

Motion Carried.

## **M E M O R I A L I Z A T I O N S**

### **ZB 08-6325 – Meiterman Commercial Properties, LLC**

Memorialization of a Resolution granting approval to amend Resolution ZB01-6007A to allow 67% medical use at 176 Route 9 North, in the C-3 zone for Meiterman Commercial Properties, LLC, Preliminary & Final Site Plan, Block 268.01, Lot 43 and Southpoint Property Management for Preliminary and Final site Plan ZB03-6097, Block 268.01, Lot 42.

Offered by:	Glen Malysz	Seconded by:	Robert Knight
Ayes:	5	Nays:	0
Absent:	3	Abstain:	1

Motion granted.

**ZB 08-6330 – Imperato, Domenic**

Memorialization of a Resolution granting approval to construct a 1,700 square foot two story addition to existing single family dwelling, and exceeding permitted lot coverage for principal structure, located at 22 Whitman Road, Block 277, Lot 5 in an R-20 residential zone.

Offered by:	Glenn Malysz	Seconded by:	Robert Knight
Ayes:	5	Nays:	0
Absent:	3	Abstain:	1

Motion granted.

**ZB 08-6327 – Berry, William, J.**

Memorialization of a Resolution granting approval to construct an addition which exceeds permitted lot coverage for principal structure located at 240 Clayton Lane, Block 299, Lot 120 in the R-80 zone.

Offered by:	Robert Knight	Seconded by:	Robert Knight
Ayes:	7	Nays:	0
Absent :	2	Abstain:	0

Motion granted.

Meeting adjourned.

Respectfully,

Yvonne M. Cautillo

